

Disposition of the Independent Review Panel



Complainant: Victor A. Cruz

IRP Case: 2002.011

Date: July 28, 2005

MDPD Case: IA 2002-065

MDPD Investigation and Conclusion Time: **20 months**

The Independent Review Panel met on July 28, 2005 for the purpose of publicly reviewing the complaint made by Victor A. Cruz against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Recommendations

1. Fully aware of its limited authority, the Panel finds that Officer Jerry Davenport's conduct poses a liability risk for Miami-Dade County. To protect the public interest, he should be dismissed from employment with MDPD.
2. That MDPD investigate the allegation that Officer Paul Terry lied in his sworn IA statement when he said "the complainant... fell face first against a metal cabinet."
3. That MDPD employ "integrity testing"¹ for Officer Paul Terry and all officers suspected of covering up for each other.

B. Incident

On the night of February 2, 2002, the complainant was arrested for DUI by MDPD and taken to the Special Patrol Bureau. The complainant stated that while he was in handcuffs, Officer Jerry Davenport punched him in the eye, grabbed him by his neck, pushed him into a door and kicked him on the ankle. The complainant was then taken to Jackson Memorial Hospital Ward D, then transported and booked at the Dade County Jail.

C. Allegations

Mr. Cruz alleged that Officer Davenport punched him in the eye, grabbed him by his neck, pushed him into a door and kicked him on the ankle, and then lied on the Arrest Affidavit when he said the complainant's injuries were received when he fell against a filing cabinet.

D. Disposition of the Independent Review Panel

The Panel found the allegation to be "**Sustained**" based on the following:

It is documented by Officer Davenport, Officer Terry and Victor Cruz that Victor Cruz received an eye injury while being handled by Officer Davenport. During the IRP Committee Meeting on 4/5/05, Sgt. Sergio Alvarez read from a document in the Internal Affairs file that Mr. Cruz's presenting complaint at Ward D was "head and left leg," thus establishing that Mr. Cruz had a head and leg injury on the date of the incident. The Medical Examiner's report supported Mr. Cruz's allegations of being punched in the eye, grabbed by the shoulder and kicked on the ankle. Even after receiving the specific

¹ Integrity testing means that the Department creates scenarios in which an officer might choose to engage in wrongdoing. Integrity tests are administered to both targeted (officers who are suspected) and a random basis.

dimensions and photographs of the file cabinet, Dr. Hyma maintained his professional opinion that the injuries received were consistent with Mr. Cruz's statement and could not be explained by stumbling and hitting his face on a cabinet.

The polygraph exam taken by Mr. Cruz indicated he was truthful regarding the incident. MDPD Homicide Bureau Polygraph Examiner William Clifford reviewed Mr. Cruz's results and stated the "examination was conducted in accordance with all rules and regulations recognized by the American Polygraph Association." In addition, MDPD Homicide Bureau Polygraph Examiner Dennis Moore reviewed Mr. Cruz's results. Mr. Moore also concluded the polygraph exam was valid and in accordance with APA standards, and concurred with the examiner's initial report that Mr. Cruz truthfully answered the questions relating to how he sustained his injuries.

The MDPD Disposition Panel, comprised of Major Carlos Gonzalez, Major Glenn Theobald and Major Pedro Casanova found that "the combined weight of the facts and circumstances provided in this case provide sufficient cause to affirm that the injuries suffered by the complainant were all of the same age and occurred as described by the Chief Medical Examiner."

E. Other Findings

- a. The MDPD Disposition Panel finding that "after contacting the Chief Medical Examiner for clarification and thoroughly reviewing all of the testimony and facts surrounding this case the [MDPD] Panel was left with no choice but to render a finding of not sustained" is not warranted. There is sufficient evidence in the Internal Affairs investigation to render a finding of sustained, based on the "preponderance of evidence" standard.
- b. Officer Paul Terry was not truthful when he said he saw Mr. Cruz pull away from Officer Davenport, fall and hit the file cabinet. The testimony of Officer Terry contradicts the evidence. The statement of Victor Cruz, the conclusions of the Medical Examiner and the polygraph exam support the allegation that Mr. Cruz' injuries were caused by a punch to the face, a grab to the shoulders and a kick to the leg, and not by falling into a file cabinet.
- c. Officer Jerry Davenport's description of the location of the injury Mr. Cruz received conflicts with the description given by Officer Paul Terry. Both officers state they picked Mr. Cruz up after he "stumbled into the cabinet" and escorted him to the bathroom where they provided first aid.

Officer Davenport

- in his statement to IA: "it was underneath his right eye."
- on the Arrest Affidavit: "a small laceration below the right eye."

Officer Terry in his taped IA statement

- "right side of his upper eye just above the forehead."
- "Jerry used his thumb to put pressure on the forehead."

- “I told Jerry to be careful, he was bleeding, but Jerry kept putting pressure on his forehead.’
 - “Officer Davenport and myself, standing up against the stall looking at his forehead and making sure it wasn’t a deep cut.”
 - “It was a very small laceration...above the eye.”
- d. There is conflicting information regarding Mr. Cruz’s presence at JMH Ward D.
- Corrections Health Services records document that Victor Cruz was booked on February 3, 2001 at 2:03 AM.
 - Ward D Prisoner Admission and Release Sheet for February 3, 2001 indicates that Mr. Cruz was brought in at 2:18 am by badge number 1613 and released at 2:55 am to badge number 1613.
 - Badge number 1613 is assigned to Sgt. Charles Trask. Officer Davenport’s badge number is 3493. Officer Terry’s badge number is 3720.
 - JMH found no record of medical treatment for Victor Cruz on February 3, 2001.
 - The JMH Initial Triage Encounter Form indicated that the complainant was seen at Ward D on February 3, 2001 for a “¼ inch wound under right eye.”
- e. Twelve of the 26 complaints (including Victor Cruz) against Officer Davenport involve allegations of punching, striking, kicking grabbing and or shoving. Ten of the 12 allege use of force while the complainant was handcuffed.
- f. IA took 20 months to complete the investigation. The original investigator, Sgt. Cynthia Machanic, was promoted and the case was reassigned to Sgt. Israel McKee. However, on August 20, 2003, Sgt. McKee was also promoted and the case was then assigned to Sgt. Alex Diaz de Villegas. The IRP received the file on February 22, 2005.

F. Observations to Promote Healthy Police/Citizen Interactions:

The MDPD disposition of “Not Sustained,” in this case, given the preponderance of the evidence, does nothing to increase the public trust that the police can police themselves.

The Independent Review Panel concluded the complaint on July 28, 2005.

Independent Review Panel

Committee Recommendation to the Panel

July 28, 2005

Complaint: A2002.011

MDPD Case: IA 2002-065

Complainant: Mr. Victor A. Cruz

Accused Party: Miami-Dade Police Department (MDPD), Officer Jerry Davenport

Date Complaint Received: January 9, 2002

Materials Reviewed: Grievance Report Form, Correspondence, IA Case #2002-065, SAO notes, MDPD personnel records, medical records for Mr. Cruz, depositions, staff notes and committee notes

Committee: Dr. Moiez A. Tapia, Panel Member; Carol Boersma, Executive Assistant to the Director, Fernando L. Robreño, Conflict Resolution Specialist

Meeting Date: April 5, 2005

Present: From MDPD Professional Compliance Bureau: Sgt. Sergio Alvarez, Sgt. Marta Garcia; Victor A. Cruz, Complainant; Troy Nader, Complainant's Attorney

Complaint: Mr. Cruz was stopped by motorcycle Officer Milton Hall for a traffic violation on February 2, 2001 at about 10:20 pm. The officer requested that he submit to a sobriety test and asked Mr. Cruz to exit the vehicle. Mr. Cruz exited his vehicle but said he could not take the roadside test because he is a disabled veteran and takes medication which causes him to lose his balance. The officer charged Mr. Cruz with DUI. He was transported to the Special Patrol Bureau (SPB).

Once he arrived at the SPB, he was seated in a chair, still in handcuffs. Mr. Cruz noticed that there were approximately five other officers in the room. Mr. Cruz stated he started speaking to another arrestee when an officer, later identified as Jerry Davenport, walked into the room. Officer Davenport then walked over to him, told him to "Shut up," and punched him in the right eye, causing him to bleed. When Mr. Cruz stated that he was going to report the officer to the mayor, Officer Davenport became angry. Officer Davenport grabbed him by the shoulder and neck and pulled him up from the chair, resulting in an abrasion to his shoulder and neck area. Officer Davenport then dragged him and slammed him into a door. Officer Davenport took him into a hallway where he kicked the complainant in the left ankle, saying, "Who are you going to tell?" Mr. Cruz said he started crying and said he would not tell anyone in fear of being kicked again. Mr. Cruz stated he was then brought back into the office.

Mr. Cruz said Officer Davenport and another female officer cleaned his eye and applied a bandage. Mr. Cruz stated that he was positive that the female officer saw the incident because she informed Officer Davenport he was talking and she helped him apply first aid.

Mr. Cruz alleges Officer Jerry Davenport punched him in the eye, grabbed him by his neck and shoulders, pushed him into a door, kicked him on his left ankle, and then lied on the Arrest Affidavit by stating his injuries were received from tripping and falling onto a file cabinet.

Department Response: MDPD Case IA 2002-065

Statement of Officer Milton Hall (Special Patrol Bureau, Motorcycle Unit)

Officer Hall stated he observed Mr. Cruz's vehicle cross the double yellow line, make an exaggerated correction and almost hit several vehicles. Officer Hall stated Mr. Cruz had an odor of alcoholic beverage on his breath, had slurred speech and stumbled when he walked. Officer Hall stated that Mr. Cruz advised he was a fully disabled veteran, but was willing to attempt the tests anyway. Mr. Cruz was unable to adequately perform any of the roadside tests. Officer Hall arrested Mr. Cruz for DUI and summoned a marked police unit to transfer Mr. Cruz to the SPB office. When Officer Hall arrived at the SPB, he noticed that Mr. Cruz was acting "obnoxious and rude" and refused to take any tests or sign any forms. Officer Hall left after observing Mr. Cruz for the required 20 minutes.¹ He was unaware of any injuries to Mr. Cruz and did not know until later that a fourth page was added to his Arrest Affidavit documenting Mr. Cruz's injuries.

Statement of Public Service Aide Janis Charles (Special Patrol Bureau)

Ms. Charles was assisting SPB officers that night by operating the breath test machine and helping in completing paperwork. She stated she observed Officer Greg Kral bring Mr. Cruz into the office. Ms. Charles recalled that there were several other officers and prisoners in the room while Mr. Cruz was being processed. Ms. Charles stated that Mr. Cruz refused to take the breath test and did not want to sign any forms. She then turned away and concentrated on her paperwork. She stated that Mr. Cruz was interrupting the processing of other prisoners by talking and recalled that Officer Davenport got up to remove Mr. Cruz from the area. Ms. Charles stated she did not pay attention to the incident but heard scuffling on the carpet and she turned to see Officer Davenport picking up Mr. Cruz from the floor.

Statement of Officer Jerry Davenport (Special Patrol Bureau, BAT)

Officer Davenport stated Mr. Cruz became belligerent and was yelling "No soplá, no soplá" to other prisoners. Officer Davenport understood the words to mean "Don't blow." Officer Davenport stated he warned Mr. Cruz several times to stop yelling since it was creating a commotion. He got up to remove Mr. Cruz from the area and grabbed him by the arm and back of his shirt. According to Officer Davenport, Mr. Cruz pulled away from him, stumbled and fell against a metal file cabinet. He did not realize that Mr. Cruz was injured until he picked him up off the floor. Officer Davenport stated that Officer Terry helped him pick up Mr. Cruz and provide first-aid to a minor laceration below his right eye. Officer Davenport documented the

¹ MDPD Departmental Manual Chapter 28 Part 2 III C1c states: "Upon arrival at the testing facility, a 20-minute observation period begins to witness that the subject does not regurgitate; i.e., burp or vomit any stomach contents."

circumstances involving the injury in Mr. Cruz's Arrest Affidavit and transported him to Dade County Jail via Ward D.

Statement of Officer Paul Terry (Special Patrol Bureau, BAT)

Officer Terry stated he was at the SPB office at the time of the incident and assisted Officer Davenport with Mr. Cruz. Officer Terry recalled that Mr. Cruz was talking and disrupting the processing of other prisoners. He stated he was standing at the door next to the cabinet when he saw Officer Davenport get up to remove Mr. Cruz, who was seated and handcuffed at the time. Officer Terry stated Officer Davenport grabbed Mr. Cruz by the arm and he saw the complainant pull away and fall face first against the metal file cabinet. Officer Terry stated both he and Officer Davenport made "a move" to stop Mr. Cruz from falling "but it was too late." Mr. Cruz sustained a minor laceration on the "right side of his upper eye just above the forehead." Officer Terry stated that he and Officer Davenport assisted Mr. Cruz into the bathroom to provide first-aid. Mr. Cruz's injuries were reported to Sgt. Jon Harris and Officer Terry stated that Mr. Cruz made no complaints to Sgt. Harris. Officer Terry states that he and Officer Davenport transported Mr. Cruz to Ward D but does not recall if Mr. Cruz was treated there.

Statement of Mr. Gustavo Cruell – Civilian Detainee (DUI)

Mr. Cruell provided only a verbal and not a taped statement, advising that he did not want to get involved. Mr. Cruell stated he did not observe Officer Davenport punch Mr. Cruz in the eye or kick him in the ankle. He added that he saw Officer Davenport grab Mr. Cruz and that Mr. Cruz pulled away.

In a memorandum prepared by a staff member of Mr. Cruz's attorney, it is documented that Mr. Cruell recalled Officer Davenport picking Mr. Cruz up, and that Mr. Cruz hit the wall. Officer Davenport "grabbed [Mr. Cruz] by the cuffed shirt and spins him around and pushes him into the door frame."

Statement of Anthony Albelo – Civilian Detainee (DUI)

Mr. Albelo did not recall if Mr. Cruz had any injuries prior to the incident. He also added that he did not see Officer Davenport punch or kick Mr. Cruz.

Statement of Officer Leon Storr (Special Patrol Bureau)

Officer Storr stated that while processing a prisoner he heard another prisoner (unknown which prisoner) become loud. Officer Storr stated he did not pay attention to the situation as he was processing another prisoner at the time. He recalled that Officer Davenport and another officer handled that situation but he was unsure how. He did not recall seeing any injuries on Mr. Cruz nor did he see Officer Davenport punch, kick or grab Mr. Cruz.

Statement of Officer Kimberly Velazquez (Special Patrol Bureau, BAT)

Officer Velazquez stated that she was on duty at the time but had no recollection of the incident or of Mr. Cruz. She was interviewed because her name appeared on the Breath Test log.

Statement of Sgt. Jon Harris (Special Patrol Bureau, BAT)

Sgt. Harris stated he had no recollection of the incident or the complainant. He stated he signed pages 1-3 of the Arrest Affidavit but not page 4, which details the injuries to Mr. Cruz.

Statement of Sgt. Robert Flarity (Special Patrol Bureau, BAT)

Sgt. Flarity stated that he was on duty at the time of the incident and was notified by Officer Davenport of the circumstances surrounding Mr. Cruz's injury. Sgt. Flarity stated that he viewed Mr. Cruz's facial injury and determined that the cut was "very minor." He stated that he did not prepare a Supervisor's Report for Use of Force to Control due to the circumstances surrounding the injury and the fact Mr. Cruz made no complaints.

Arrest Affidavit (Davenport Addition)

Officer Davenport added "resisting w/out violence" to the DUI charge and added the following narrative:

While at the SPB, subject was waiting to be transported & was in the same room where several other people were being processed. Subject, who refused to comply w/ a breath test, began to yell at one of the other subjects "No soplal! No soplal!" Subject continued to interfere with that process and would not be quiet. An attempt was made to remove subject from the room & when he was assisted to his feet, subject stated "No" & pushed away from Off Davenport. Subject lost his bal. & stumbled & struck his head on a cabinet, causing a small laceration below the right eye. Subject was transported to Ward "D"- DCJ, then to DCJ.

Staff Addendum: On 10/4/01, Mr. Cruz's attorney filed a Defendant's Plea in Absentia. Mr. Cruz pled guilty to the charges of Resisting Arrest Without Violence and to the amended charge of Reckless Driving.

Medical Examiner's Report, Dr. Bruce Hyma (Chief Medical Examiner)

Mr. Cruz was examined by Dr. Hyma on February 8, 2002, six days after the incident. Dr. Hyma looked at pictures allegedly taken on February 3 2003, the day after the incident. Dr. Hyma's opinion was as follows:

The injuries on the right side of the face, the right shoulder, and the left ankle all appear to be the same age. The injury to the lateral aspect of the right eye is consistent with a blow from a fist. The injury to the right shoulder is consistent with an abrasion from grabbing the victim's clothing as he described. The injuries to the lateral aspect of the left ankle are consistent with kicking injuries from the tip of a shoe.

This constellation of injuries cannot be explained by stumbling and hitting his face on a cabinet. A more specific opinion could be rendered given the specific dimensions of the cabinet in question and the specific detail of how the subject stumbled.

On November 4, 2003, Detective Frank VanLoan of the MDPD Crime Scene Bureau obtained measurements and photographed the file cabinet in question. After reviewing the measurements and photographs, Dr. Hyma reaffirmed his original opinion that Mr. Cruz's injuries were consistent with his allegations.

State Attorney's Office Review

On May 10, 2002, the case against Officer Davenport was forwarded to Assistant State Attorney Sandra Miller for review. On several occasions throughout the State Attorney's Office review process, ASA Miller reported the case was being reviewed by her supervisors and senior staff members. On February 5, 2003, ASA Miller said the SAO declined to prosecute Officer Davenport, and the case should be handled administratively.

MDPD Disposition

Allegation: Officer Jerry Davenport walked up to him and punched him on his right eye, causing him to bleed. Officer Davenport then grabbed him by his neck and shoulders and pulled him up from the chair he was seated on and forced him into a door, resulting in an abrasion to his neck and shoulder area. Officer Davenport then kicked him on his left ankle, which resulted in a laceration to the area. **“NOT SUSTAINED”**

The following is excerpted from the MDPD Disposition Memorandum:

Medical Examiner Bruce Hyma, considered a pattern injury expert, examined the complainant and concluded that his injuries were consistent with his allegation.

The complainant submitted to an independent Polygraph Examination. The examiner concluded the complainant truthfully answered the relevant questions.

Officer Davenport admits grabbing the complainant by the arm and the back of the shirt and then lifting him up from the chair where he was seated, but denies striking him. There is no physical or testimonial evidence supporting that the officer struck the complainant as described in the allegation. The fact that the complainant was injured is not in question. However, after contacting the Chief Medical Examiner for clarification and thoroughly reviewing all of the testimony surrounding this case, the Panel was left with no choice but to render a finding of not sustained.

- Panel's Note: On Thursday, September 9, 2004, the MDPD Panel Chairperson contacted Chief Medical Examiner Bruce Hyma telephonically. Dr. Hyma was asked to elaborate on the age of the injuries, specifically, on whether or not he was able to determine when the injuries occurred. Dr. Hyma related that neither he nor anyone else could be that precise. Dr. Hyma added that indeed the injury could have occurred anytime within the six days that it took for Mr. Cruz to be examined.

Other Findings: Supervisor's Report of Use of Force to Control (SRUFC) was not prepared. **“SUSTAINED”**

Sgt. Robert Flarity acknowledged being informed by Officer Davenport of Mr. Cruz's injury. Sgt. Flarity also related that he did not prepare an SRUFC due to the circumstances surrounding the complainant's "minor facial injury," and that "the complainant made no complaints against the officers involved." Sgt. Flarity reviewed and signed page 4 of the Arrest Affidavit as the approving supervisor, the page describing the injury. However, the sergeant failed to properly investigate the matter and prepare an SRUFC. This incident clearly meets the criteria that mandates that an SRUFC be prepared whenever there is an injury or complaint of injury that results from the guiding, holding, directing or handcuffing of a person who offers resistance.

Sgt. Flarity received a Record of Counseling, which states he was "made aware of a subject's eye injury that occurred as a result of an encounter with Officer Jerry Davenport, and that the incident occurred while in his custody and control." It acknowledges there was an encounter between Mr. Cruz and Officer Davenport but makes no mention of Mr. Cruz tripping and hitting his face on a file cabinet.

Committee Remarks: The following was discussed during the committee meeting on 4/5/05:

Concerns about Internal Affairs Investigation

Troy Nader, Mr. Cruz's attorney, wanted IA to reconsider the allegation that Officer Davenport struck Mr. Cruz. Mr. Nader made reference to the Medical Examiner's finding that Officer Davenport's assertion that Mr. Cruz's injuries were caused when he fell against a filing cabinet was inconsistent with the actual injuries.

Ms. Boersma expressed concern that the IA investigation took over three years to complete. Sgt. Alvarez stated that it is a very tedious process and this complaint had gone to three different investigators due to promotions within the PCB.

Concerns about Medical Records

Ms. Boersma pointed out that IRP staff did not have the medical records from Ward D documenting Mr. Cruz's injuries. Dr. Tapia stated that those records were essential in determining whether Mr. Cruz's injuries were sustained as a result of the alleged incident.

Sgt. Alvarez had some medical records in the IA file and read from a memo written by Michelle (a staff member of Mr. Cruz's attorney):

"Pursuant to your instructions, I called the medical records department from JMH and to try to get Victor's records. I was advised that the last time he went was in 1988 and he wasn't seen. I was then given the number to Ward D to see if they had any information. I spoke with a gentleman at the intake department of Ward D and he advised that Mr. Cruz was seen on February 3rd, 2001. Victor was brought in by Metro-Dade Police at 2:18 in the morning and was discharged at 2:55 AM."

When asked if the record indicated why Mr. Cruz was taken to Ward D, Sgt. Alvarez read from the record: "Presenting medical complaint, head and left leg." Mr. Cruz stated that he was not taken to Ward D. Ms. Boersma inquired whether the IRP could obtain copies of the medical records in the IA file. Sgt. Alvarez informed her that Mr. Cruz needed to sign a medical release form in order to obtain those documents.

Concerns about Polygraph Test

Dr. Tapia asked Mr. Cruz when he took the polygraph. Mr. Cruz stated he took it about a month later. Mr. Nader confirmed it was in June. Sgt. Alvarez stated he would find out what value is given to those results. Sgt. Alvarez also stated complainants are asked if they are willing to take polygraphs but they are not mandatory.

The IA report documents whether or not a complainant is willing to take a polygraph and the results of a polygraph if one is taken. Sgt. Alvarez stated that police officers are not required to take polygraphs due to protections given to them under the Police Officers' Bill of Rights. Ms. Boersma asked if complainants knew that officers were not required to submit to polygraphs. Sgt. Alvarez said they were not informed. Dr. Tapia asked what weight is given to polygraph test results when determining the disposition of allegations. Mr. Nader expressed concerns that officers can use negative results against complainants but complainants cannot use positive results in their favor.

Concerns about Lack of Witnesses

Mr. Robreño questioned how a room full of police officers did not notice a physical encounter between an officer and a detainee. Mr. Robreño pointed out that officers are trained to be keen observers. PSA Janis Charles also stated in her deposition that, "I think that some people did see what happened, I am sure. They would have had to."

Staff Notes: Mr. Cruz signed a Medical Release form, authorizing MDPD to release to the IRP a copy of the medical records in the Internal Affairs file, and gave it to Sgt. Alvarez. Later staff contacted Pam Griffin, supervisor for MDPD Professional Compliance (PCB) records, who stated she was not able to provide staff those records. Staff followed up with PCB Lt. Temple Carpenter who responded that medical records in PCB case files are exempted information and not released pursuant to FSS. 119, even though the complainant signs a release form.

Mr. Cruz submitted several medical and psychological files documenting his disability, which he received while serving in the armed forces.

A review of Officer Davenport's court deposition revealed that he and Officer Terry maintain a social relationship outside of work. Officer Davenport stated he and his wife have dinner with Officer Terry on occasion.

IRP staff reviewed the employee profiles for Officers Davenport and Terry. Table 1 lists complaints filed against Officer Davenport from 1984-2002. Table 2 lists Use of Force Reports for Officer Davenport. Table 3 lists complaints filed against Officer Terry from 1995-2001. Table 4 lists arrests for Victor Cruz.

Table 1 – Officer Jerry Davenport

Officer Davenport was hired 1/24/83.

	Complaint No.	Allegation(s)	Finding(s)	Action
1	IR 1984-082	Obedience to Laws and Rules (<i>did not return subject's property</i>)	Sustained	Disciplinary Action Report
2	IR 1984-126	Obedience to Laws and Rules	Not Sustained	None
3	PC 1985-001	Discourtesy, Conduct Unbecoming an Officer, Overreacting	Not Sustained	None
4	PC 1985-108	Conduct Toward the Public	Not Sustained	None
5	PC 1986-232	Obedience to Laws and Rules, Safeguarding Persons and Property in Custody, Overreacting	Not Sustained	None
6	PC 1987-352	Conduct Toward Public, Overreacting	Not Sustained	None
7	IR 1988-087	Obedience to Laws and Rules, Conduct to the Public, Use of Force (<i>struck w/flashlight, choked while handcuffed</i>)	Not Sustained: Use of Force, Conduct to the Public Sustained: Obedience to Laws and Rules	Record of Counseling
8	IR 1988-101	Obedience to Laws and Rules, Use of Force, Overreacting, (<i>Taped mouth, kicked while handcuffed</i>)	Not Sustained	None

	Complaint No.	Allegation(s)	Finding(s)	Action
9	PC 1988-164	Discourtesy (Grabbed by neck, pushed)	Not Sustained	None
10	IR 1988-325	Obedience to Laws and Rules, Conduct Toward Public, Battery (pushed while handcuffed)	Not Sustained	None
11	PC 1989-0003	4 Counts of Improper Procedure	Not Sustained	None
12	SI 1989-0135	Shooting (Animal)	Exonerated	None
13	IA 1989-0282	Battery, Improper Procedure, Misinformation (punched subject while handcuffed, untruthful statements)	Sustained: 1 Count Battery, Improper Procedure, Misinformation Exonerated: Improper Search Not Sustained: 1 Count Battery	10 Day Suspension
14	IA 1989-0389	3 Counts Battery, Discourtesy (beat subject with flashlight, punched in mouth, kicked, threw him on car after handcuffing)	Not Sustained	None
15	PC 1991-0029	2 Counts Discourtesy, Improper Procedure	Not Sustained	None
16	IA 1991-0039	2 Counts Battery (struck and kicked detainee while handcuffed)	Not Sustained	None
17	PC 1991-0103	Discourtesy	Not Sustained	None
18	PC 1991-0393	Minor Force, Unnecessary Towing, Damage to Property, Discourtesy (pushed)	Not Sustained	None
19	PC 1992-0239	Improper Procedure <i>(received gift from Radio Shack)</i>	Sustained	Record of Counseling
20	IA 1992-0350	Discourtesy, Overreacting, Improper Procedure <i>(no police report written)</i>	Not Sustained: Discourtesy, Overreacting Sustained: Improper Procedure	Record of Counseling
21	IA 1997-0346	3 Counts Improper Procedure, Improper Investigation <i>(personal use of county assigned vehicle, poor judgment)</i>	Not Sustained: Improper Investigation Exonerated: 1 Count Improper Procedure Sustained: 2 Counts Improper Procedure	Written Reprimand
22	PC 1997-0445	3 Counts Discourtesy, 2 Counts improper Procedure	Not Sustained	None
23	IA 2000-0230	Unauthorized Force, Force Violation, Discourtesy (grabbed detainee by neck, heeled, punched in side after handcuffing)	Not Sustained	None
24	PC 2002-0257	Improper Procedure, Minor Force, Traffic Law Violation (grabbed by back of neck while handcuffed)	Not Sustained	None
25	IA 2002-0065 Victor Cruz	Force Violation (punched, kicked grabbed while handcuffed)	Not Sustained	None
26	IA 2002-0398	Force Violation (shoved detainee to floor while handcuffed)	Not Sustained	None

Table 2 - Officer Jerry Davenport Use of Force

	Date of Report	Weapon Used	Description of Force	Subject's Injury
1	7/22/88	Hands	The subject pushed Officer Davenport then pulled away from him, falling to the ground and striking his head on a curb. The subject then took the officer's flashlight and struck him.	Laceration
2	12/12/87	Hands	Officers arrived at a domestic encounter subject who was armed with automatic pistol. Subject subdued, no shots fired.	NVI
3	6/25/85	Hands	Subject fled officers at a high rate of speed, violently resisted arrest kicking and punching officers.	NVI
4	7/10/85	Hands	Off duty officers assisted with intoxicated Subject, resisted, kicking officers.	Laceration
5	1/22/85	Hands	Subject struggled during Bench Warrant arrest, dragging officer into vehicle.	NVI
6	10/16/84	Hands	Subject became violent kicking and striking officers. Subject forced to ground and subdued.	NVI
7	3/25/84	Hands	Subject arrested for assault high on unknown substance. Transported to Ward D. Expired at a later date.	Fatality
8	3/11/85	Hands	Subject became violent after high speed vehicle chase.	Laceration
9	3/17/85	Hands	Subject violently resisted arrest.	Laceration
10	3/18/85	Hands	Subject struck officer in eye.	NVI
11	3/28/87	Hands	While being processed at station subject became hostile and resisted officers' attempts to test him, a struggle ensued and subject was subdued. Subject complained of soreness. Officer Davenport sustained cut to lip, shin, and bruises.	N/A
12	9/9/87	Hands	Subject #2 attempted to free Subject #1 by striking officer. Subject #3 attempted to push officers away from subject #1 and 2.	NVI
13	11/7/87	Hands/Feet	Intoxicated subject was placed in police vehicle where he began kicking out the rear door and window. His hands and feet had to be tied behind his back.	NVI
14	11/21/87	Firearm (Non Contact)	Intoxicated subject charged with shooting an occupied dwelling with a fully automatic MAC10 . Subject violently resisted arrest, hog-tied and sent to JMH as a result of fall against doorjamb.	Laceration
15	12/6/87	Feet	Intoxicated subject became loud and belligerent and was taken into custody. Once in police vehicle he began to kick plexiglass. Officers hog tied the subject.	Abrasion
16	7/12/88	Hands	While handcuffed, the subject twisted away from Officer Davenport and fled on foot. Officer Davenport later tripped over the subject, who had concealed himself, and fell on top of him.	Scratches
17	10/18/88	Hands	DUI subject attempted to leave DUI room by pushing against Officer Davenport who escorted her back. She then pulled away, lost her balance, fell and struck her head on a table.	Laceration
18	11/14/88	Hands	During arrest, the subject (an admitted cocaine user) thrashed about wildly, punched officers and grabbed Officer Corzo's revolver. Subject was forced to the ground and subdued by the officers and handcuffed.	Laceration
19	2/7/89	Hands/Arm	Push/Pull and Strike/Hit	Bruise/Abrasion
20	5/15/89	Firearm	Threatening	Gunshot
21	10/29/89	Fist, Teeth	Strike/Hit and Bite	Bruise/Abrasion
22	5/19/90	Hands/Arm	Grab/Hold and Push/Pull	NVI

	Date of Report	Weapon Used	Description of Force	Subject's Injury
23	1/15/91	Hands/Arm	Push/Pull and Grab/Hold	Laceration Bruise/Abrasion
24	8/13/91	None	Restrain	Bruise/Abrasion
25	10/16/91	Feet/Leg	Strike/Hit	NVI
26	3/25/93	Fist, Hands/Arm	Threaten, Grab/Hold	Bruise/ Abrasion
27	10/25/93	Fist Feet/Leg	Strike/Hit	Laceration , Other
28	7/18/99	Hands/Arm	Push/Pull, Strike/Hit	Laceration
29	9/1/99	Hands/Arm	Push/Pull	Bruise/Abrasion
30	7/30/00	Feet/Leg	Strike/Hit	Bruise/Abrasion Torso and Face
31	12/29/00	Hands/Arm	Push/Pull	Bruise/Abrasion Head and Face
32	8/2/02	Fist Feet//Leg	Strike/Hit	Bruise/Abrasion Face
3	10/31/02	None	Other	Laceration to Face
34	10/19/03	Hands/Arm	Threaten	NVI
35	11/13/03	Feet/Leg	Strike/Hit	Bruise/Abrasion Leg
36	1/24/04	Fist Feet/Leg Teeth	Strike/Hit, Bite	Not Related
37	3/7/04	Feet/Leg	Strike/Hit	Bruise/Abrasion Face
38	6/18/04	Feet/Leg	Strike/Hit	NVI
39	2/20/05	Feet/Leg	Strike/Hit	Bruise/Abrasion Multiple

Table 3 - Officer Paul Terry

Officer Terry was hired on 3/29/93.

Complaint No.	Allegation(s)	Finding(s)	Action
PC 1995-0279	Unnecessary Towing, Improper Procedure	Not Sustained	None
IA 1999-0526	2 Counts Force Violation, Discourtesy (<i>broke complainant's windshield with fist</i>)	<i>Sustained</i>	Record of Counseling
IA 2001-0160	Unauthorized Force, Discourtesy	Not Sustained	None

Table 4 - Victor Cruz Arrests

Date Filed	Charge	Charge Type	Disposition
7/20/84	Drivers License/Non Compliance	Felony	No Action
3/4/75	Breaking & Entering/Auto/Aircraft	Felony	Adj. Withheld/Probation
3/14/88	Worthless Check Issued \$150+	Felony	Nolle Pros - Restitution
2/18/83	Disorderly Intoxication	Municipal Ordinance	Adj. Withheld/Fine & Cost
3/15/01	Resist/Obstr/Police Officer/Fire Fighter	County Ordinance	Adj. Withheld – Suspend Entry of Sentence

Committee Findings:

A. Regarding the allegation

The committee found evidence to **SUSTAIN** the allegation that Officer Davenport punched, grabbed and kicked Mr. Cruz, and then lied on the Arrest Affidavit by stating his injuries were received from tripping and falling onto a file cabinet.

It is documented by Officer Davenport, Officer Terry and Victor Cruz that Victor Cruz received an eye injury while being handled by Officer Davenport. During the IRP Committee Meeting on 4/5/05, Sgt. Sergio Alvarez read from a document in the Internal Affairs file that Mr. Cruz's presenting complaint at Ward D was "head and left leg," thus establishing that Mr. Cruz had a head and leg injury on the date of the incident. The Medical Examiner's report supported Mr. Cruz's allegations of being punched in the eye, grabbed by the shoulder and kicked on the ankle. Even after receiving the specific dimensions and photographs of the file cabinet, Dr. Hyma maintained his professional opinion that the injuries received were consistent with Mr. Cruz's statement and could not be explained by stumbling and hitting his face on a cabinet.

The polygraph exam taken by Mr. Cruz indicated he was truthful regarding the incident. MDPD Homicide Bureau Polygraph Examiner William Clifford reviewed Mr. Cruz's results and stated the "examination was conducted in accordance with all rules and regulations recognized by the American Polygraph Association." In addition, MDPD Homicide Bureau Polygraph Examiner Dennis Moore reviewed Mr. Cruz's results. Mr. Moore also concluded the polygraph exam was valid and in accordance with APA standards, and concurred with the examiner's initial report that Mr. Cruz truthfully answered the questions relating to how he sustained his injuries.

The MDPD Disposition Panel, comprised of Major Carlos Gonzalez, Major Glenn Theobald and Major Pedro Casanova found that "the combined weight of the facts and circumstances provided in this case provide sufficient cause to affirm that the injuries suffered by the complainant were all of the same age and occurred as described by the Chief Medical Examiner."

B. Other Findings:

1. The MDPD Disposition Panel finding that “after contacting the Chief Medical Examiner for clarification and thoroughly reviewing all of the testimony and facts surrounding this case the [MDPD] Panel was left with no choice but to render a finding of not sustained” is not warranted. There is sufficient evidence in the Internal Affairs investigation to render a finding of sustained, based on the "preponderance of evidence" standard.
2. Officer Paul Terry was not truthful when he said he saw Mr. Cruz pull away from Officer Davenport, fall and hit the file cabinet. The testimony of Officer Terry contradicts the evidence. The statement of Victor Cruz, the conclusions of the Medical Examiner and the polygraph exam support the allegation that Mr. Cruz' injuries were caused by a punch to the face, a grab to the shoulders and a kick to the leg, and not by falling into a file cabinet.
3. Officer Jerry Davenport's description of the location of the injury Mr. Cruz received conflicts with the description given by Officer Paul Terry. Both officers state they picked Mr. Cruz up after he “stumbled into the cabinet” and escorted him to the bathroom where they provided first aid.

Officer Davenport

- in his statement to IA: “it was underneath his right eye.”
- on the Arrest Affidavit: “a small laceration below the right eye.”

Officer Terry in his taped IA statement

- “right side of his upper eye just above the forehead.”
- “Jerry used his thumb to put pressure on the forehead.”
- “I told Jerry to be careful, he was bleeding, but Jerry kept putting pressure on his forehead.”
- “Officer Davenport and myself, standing up against the stall looking at his forehead and making sure it wasn't a deep cut.”
- “It was a very small laceration...above the eye..”

4. There is conflicting information regarding Mr. Cruz's presence at JMH Ward D.
 - Corrections Health Services records document that Victor Cruz was booked on February 3, 2001 at 2:03 AM.
 - Ward D Prisoner Admission and Release Sheet for February 3, 2001 indicates that Mr. Cruz was brought in at 2:18 am by badge number 1613 and released at 2:55 am to badge number 1613.
 - Badge number 1613 is assigned to Sgt. Charles Trask. Officer Davenport's badge number is 3493. Officer Terry's badge number is 3720.
 - JMH found no record of medical treatment for Victor Cruz on February 3, 2001.
 - Mr. Cruz said he was not taken to Ward D.

5. Twelve of the 26 complaints (including Victor Cruz) against Officer Davenport involve allegations of punching, striking, kicking grabbing and or shoving. Ten of the 12 allege use of force while the complainant was handcuffed.
6. IA took 20 months to complete the investigation. The original investigator, Sgt. Cynthia Machanic, was promoted and the case was reassigned to Sgt. Israel McKee. However, on August 20, 2003, Sgt. McKee was also promoted and the case was then assigned to Sgt. Alex Diaz de Villegas. The IRP received the file on February 22, 2005.

Observation to Promote Constructive Police/Citizen Interactions

The MDPD disposition of “Not Sustained,” in this case, given the preponderance of the evidence, does nothing to increase the public trust that the police can police themselves.

Recommendations:

1. That the Panel adopt the committees findings and recommendations.
2. That MDPD place Officer Jerry Davenport on a special “management watch” given his use of force record.
3. That MDPD investigate the allegation that Officer Paul Terry lied in his sworn IA statement when he said “the complainant... fell face first against a metal cabinet.”
4. That MDPD employ “integrity testing”² of officers suspected of covering up for each other.

² Integrity testing means that the Department creates scenarios in which an officer might choose to engage in wrongdoing. Integrity tests are administered on both a targeted (officers who are suspected) and a random basis.